

*OHIO VALLEY ENVIRONMENTAL COALITION, et al. v.*  
*BLUESTONE COAL CORPORATION*

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*STEPHEN BALL*

*February 20, 2020*

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1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
4 BLUEFIELD DIVISION  
5  
6 \* \* \* \* \*  
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8 OHIO VALLEY ENVIRONMENTAL  
9 COALITION, WEST VIRGINIA  
10 HIGHLANDS CONSERVANCY,  
11 APPALACHIAN VOICES, and  
12 THE SIERRA CLUB,  
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14 Plaintiffs,  
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16 v. CIVIL ACTION  
17 NO.: 1:19-cv-00576  
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19 BLUESTONE COAL CORPORATION,  
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21 Defendant.  
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23 \* \* \* \* \*  
24  
25 The deposition of STEPHEN BALL, taken by  
26 the Plaintiffs under the Federal Rules of  
27 Civil Procedure in the above-entitled action,  
28 pursuant to written notice, before Teresa L.  
29 Harvey, a Registered Diplomate Reporter and  
30 Notary Public within and for the State of  
31 West Virginia, at the office of Appalachian  
32 Mountain Advocates, 1046 Washington Street,  
33 East, Lewisburg, West Virginia, on the 20th  
34 day of February, 2020.  
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Page 49

1 [Whereupon remarks were had off the  
2 record and the deposition recessed at  
3 11:37 a.m. The deposition resumed at  
4 11:51 a.m.]  
5 BY MR. BECHER:  
6 **Q. And so let me loop back to the A & G system.**  
7 **The documents related to A & G were not something that**  
8 **you had mentioned in outstanding documents. Would you**  
9 **agree with me that if you were going to build a system**  
10 **based on the A & G system, that those documents would be**  
11 **relevant to our questions about selenium treatment?**  
12 MR. BRYANT: Objection to the form of the  
13 question.  
14 THE DEPONENT: I was just going to say,  
15 whatever those documents might be.  
16 BY MR. BECHER:  
17 **Q. Have you made any efforts to pull together**  
18 **those A & G records?**  
19 A. No. No. As I said earlier, that's a  
20 relatively recent development and those conversations  
21 are very recent, and so I have not made an attempt to  
22 pull together any documents related to that.  
23 **Q. After this deposition, do you have plans to**  
24 **pull together any A & G documents?**

Page 50

1 A. We will take a look at that, yes, sir.  
2 **Q. And again, as we ask for other documents, if**  
3 **those turn up issues or questions for another**  
4 **deposition, would you agree to another deposition on**  
5 **those documents?**  
6 A. Yes.  
7 **Q. Let me hand you what I'd like to have marked**  
8 **as Exhibit 2.**  
9 **BALL DEPOSITION EXHIBIT 2**  
10 [A 39-page document entitled  
11 Administrative Civil Penalty Assessment  
12 Notice, dated July 11, 2019, was marked  
13 for identification purposes as Deposition  
14 Exhibit 2.]  
15 **Q. And I'll just represent what I've given you is**  
16 **a document -- well, really, two documents, one titled**  
17 **Administrative Civil Penalty Assessment Notice from DEP**  
18 **dated July 11, 2019, and the other, a document, Consent**  
19 **Order, which was a Proposed Consent Order related to**  
20 **that Administrative Civil Penalty Assessment.**  
21 **Do you agree with that characterization?**  
22 A. Yes.  
23 **Q. Okay. And have you seen these documents**  
24 **before?**

Page 51

1 A. Yes.  
2 **Q. And can you describe to me how you came to be**  
3 **familiar with these documents?**  
4 A. Actually, for me personally, as part of the  
5 deposition notice.  
6 **Q. Uh-huh.**  
7 A. And then as part of that, I had a conversation  
8 with Bob Cochran, who is one of our -- he works for  
9 Bluestone Industries, is one of the people within our  
10 company that deals primarily with the West Virginia DEP.  
11 I asked Bob if he was familiar with this  
12 agreement, and he was not.  
13 So then I asked Jay Justice if he was  
14 familiar with this agreement, and he was not.  
15 And I talked to George Stephens, who did  
16 have some familiarity with it. But after talking to the  
17 three of those guys -- and I also did talk to Tom Lusk  
18 as well. This agreement was just something that was  
19 sent to us by West Virginia DEP. I think this cover  
20 letter, you know, basically says what it is, which is,  
21 "Enclosed is a Proposed Consent Order."  
22 Upon receipt, nothing was ever done with  
23 this document specifically, but a separate Payment Plan  
24 Agreement was entered into with not only the Bluestone

Page 52

1 Coal permits but several affiliate company permits as  
2 well.  
3 There were several outstanding -- it was  
4 a mixed bag of things. It was NPDES renewal fees.  
5 There were annual permit fees, things like that. And  
6 all of those were made part of a payment plan that was  
7 entered into with DEP.  
8 And then on some of the what I'll call  
9 non-monetary issues that were brought up, compliance and  
10 things like that, Tom Lusk and Bob Cochran met with  
11 Harold Ward at DEP and started having conversations  
12 about how to deal with some of the compliance issues.  
13 **Q. Okay. And, first of all, Tom Lusk, I think**  
14 **you had mentioned -- let me scratch that.**  
15 **I think you had mentioned that George**  
16 **Stephens works for Bluestone Resources?**  
17 A. Bluestone Industries.  
18 **Q. Industries. Okay. And who does Tom Lusk work**  
19 **for?**  
20 A. Tom Lusk is retired. He's a former chief  
21 operating officer of Bluestone Industries. He currently  
22 doesn't work for -- or at least, to our knowledge,  
23 doesn't work for anyone.  
24 **Q. And is he currently involved with meetings**